



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ron Lahr
Reagan Republican Victory Fund
P.O. Box 1274
Post Falls, ID 83877

DEC 21 2012

RE: MUR 6557

Dear Mr. Lahr:

On April 24, 2012, the Federal Election Commission notified the Reagan Republican Victory Fund of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaints were forwarded to you at that time.

Upon further review of the allegations contained in the complaints, the Commission, on December 18, 2012, found no reason to believe that the Reagan Republican Victory Fund violated 2 U.S.C. §§ 433 and 434. The Commission also voted to dismiss as matter of prosecutorial discretion any violations of 2 U.S.C. §§ 434(c) and 441d by the Reagan Republican Victory Fund. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

The Act requires every person other than a political committee who makes independent expenditures of over \$250 in a calendar year to file an independent expenditure report. 2 U.S.C. § 434(c); 11 C.F.R. § 109.10(b). The Act also requires all public communications that expressly advocate the election or defeat of a clearly identified candidate to contain disclaimers. 2 U.S.C. § 441d; 11 C.F.R. § 110.11(a)(2). Communications that are not authorized by a candidate are required to clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communications, and to state that the communications were not authorized by any candidate or the candidate's committee. 2 U.S.C. § 441d(a)(3). The Commission cautions the Reagan Republican Victory Fund to take steps to ensure that its conduct is in compliance with the Act and the Commission's regulations.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

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If you have any questions, please contact Kasey Morgenheim, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Kathleen M. Guith
Deputy Associate General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Reagan Republican Victory Fund

MUR 6557

I. INTRODUCTION

This matter was generated by Complaints filed with the Federal Election Commission by John Erickson, Scott Grunsted, and Thomas P. Hanley, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the Kootenai County Reagan Republicans. According to the three Complaints, which are nearly identical, the Kootenai County Reagan Republicans ("KCRR"), Jeff Ward (KCRR's treasurer), the Strategy Group, Inc., and four candidates for local office in Kootenai County, Idaho — Keith Hutcheson, Barry McHugh, Todd Tondee, and Dan Green — disseminated a mailer to voters in Kootenai County that endorsed federal and state candidates. The Complaints allege that the Respondents violated the Act because they spent over \$1,000 for a federal candidate without "filing with" the Commission.

Upon review of the Complaints, Responses, and other available information, it does not appear that RRVF was required to register and report with the Commission as a political committee. It does appear, however, that RRVF failed to report its expenditure for the federal candidate's share of the mailer as an independent expenditure and failed to include a complete disclaimer on the mailer. Given the small amount in violation and other mitigating factors, the Commission dismisses the independent expenditure reporting and disclaimer violations as a matter of prosecutorial discretion.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Summary**

3 According to KCRR's its website, it is located in Post Falls, Idaho. *See*
4 www.reaganrepublicans.net. Ron Lahr is KCRR's president, Jeff Ward is KCRR's treasurer,
5 and Keith Hutcheson is a KCRR board member. *See*
6 <http://www.reaganrepublicans.net/KCRRBoard.html>. KCRR's articles of incorporation state
7 that it is organized as an unincorporated nonprofit social welfare public benefit organization
8 under Idaho state law and within the meaning of 26 U.S.C. § 501(c)(4). *See*
9 <http://www.reaganrepublicans.net/Articles.html>. KCRR describes its mission as supporting the
10 Republican Party and the principles of limited government and a free enterprise economy
11 espoused by President Ronald Reagan. *See* <http://www.reaganrepublicans.net/mission.html>.
12 RRVF is an Idaho state political committee that is also located in Post Falls, Idaho. Its
13 disclosure reports filed with the Idaho Secretary of State list Lora Gervais as RRVF's chair and
14 Jeff Ward as RRVF's treasurer.¹ *See*
15 [http://www.sos.idaho.gov/elect/Finance/2012/PrePrimary/Party/ReaganRepublicansVictoryFund.](http://www.sos.idaho.gov/elect/Finance/2012/PrePrimary/Party/ReaganRepublicansVictoryFund.pdf)
16 pdf.

17 It is unclear how KCRR and RRVF are connected. The groups share a mailing address at
18 P.O. Box 1274 in Post Falls, Idaho, and appear to have at least some overlap in officers, as noted
19 above. Additionally, the disclaimer on the mailer at issue in this matter states that it is paid for

¹ Ms. Gervais is also listed as KCRR's Vice President of Finance. *See*
<http://www.reaganrepublicans.net/KCRRBoard.html>.

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1 by RRVF but the website address listed, www.reaganrepublicans.net, directs the reader to the
2 KCRR website.² Compl., Ex. 1.

3 The Complaints allege that KCRR and the individual Respondents “working together . . .
4 spent over \$1,000 for a federal candidate without filing with the FEC” when they sent a mailer to
5 voters in Kootenai County that endorsed state candidates and a federal candidate. Compl. at 1.
6 The Complaints attach the mailer at issue, which states that “[the] Kootenai County Reagan
7 Republicans wholeheartedly endorse the following conservative common-sense candidates in the
8 May 15 [2012] Republican Primary.” Compl., Ex. 1. The mailer lists 14 candidates for federal,
9 state, and local offices, and for each candidate includes the office sought, a photograph, and a
10 short statement about the candidate. The mailer includes one candidate for federal office,
11 Congressman Raul Labrador, the incumbent candidate for the U.S. House of Representatives
12 from Idaho’s First Congressional District. *Id.* The disclaimer at the bottom of the mailer states
13 that it is “Proudly Paid for by the Reagan Republican Victory Fund
14 www.reaganrepublicans.net.” *Id.*

15 KCRR submitted a Response — signed and sworn to by both Ron Lahr, as KCRR’s
16 president, and Jeff Ward, as KCRR’s treasurer³ — which includes information about both KCRR
17 and RRVF.⁴ See KCRR Resp. The KCRR Response explains that RRVF paid for the
18 endorsement mailer at issue and is identified in its disclaimer. KCRR Resp. ¶ 1. The Response
19 asserts that although KCRR issued the endorsements, it did not pay for or “add materially to” the

² A website titled “The Idaho Federation of Reagan Republicans” includes a link to donate to RRVF. See <http://www.reaganrepublicans.info/>. Clicking on the section of this page for “Chapters” immediately redirects visitors to the KCRR website.

³ Although the KCRR response is sworn to by Ward as Treasurer of KCRR, Ward is also RRVF’s treasurer.

⁴ RRVF was notified of the Complaints but did not submit a response.

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1 mailer and has and will not make any expenditures for federal candidates in 2012. *Id.* ¶ 2. The
2 KCRR Response identifies the Strategy Group, Inc. as the vendor that designed, printed, and
3 mailed a portion of the mailers and identifies Keith Hutcheson, Barry McHugh, Todd Tondee,
4 and Dan Green as candidates for Kootenai County offices who had no participation in the mailer
5 other than being listed as endorsed candidates.⁵ *Id.* ¶ 3-4.

6 The KCRR Response contends that RRVF is not a political committee as defined in the
7 Act because it has not and will not spend over \$1,000 in connection with federal elections during
8 this calendar year. *Id.* ¶ 5. It asserts that Jeff Ward contacted the Commission's Information
9 Division to confirm that the federal share of the expenditure for the mailer would be the single
10 federal candidate's pro rata share of the total cost. *Id.* ¶ 7-8. The KCRR Response explains that
11 the total cost for the design, printing, and postage of the mailer was \$7,517.26 as of May 5, 2012,
12 making the federal candidate's pro rata share \$587.26.⁶ KCRR states that because the federal
13 share fell below the \$1,000 threshold for reporting as a political committee, RRVF did not file
14 any reports with the Commission and only reported the expenditures to the Idaho Secretary of
15 State. *Id.* ¶ 9-10.

16 **B. Legal Analysis**

17 The Complaints generally allege that RRVF spent over \$1,000 for a federal candidate
18 without "filing with" the Commission. Compl. at 1.

⁵ The Idaho Secretary of State's website lists the Strategy Group, Inc. as a general business corporation with Ron Lahr as its registered agent.

⁶ The KCRR Response states that the pro rata share for the federal candidate is 1/13 of the total cost of the mailer because the mailer listed 13 endorsed candidates. KCRR Resp. at ¶ 8. But the mailer attached to the Complaints endorses 14 candidates, one of whom is a federal candidate. Compl., Ex. 1. Accordingly, it appears that the pro rata share may be 1/14 of the total cost of the mailer, or \$536.95. This potential discrepancy is not material and does not affect the Commission's findings.

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1 1. Political Committee Status

2 Under the Act, groups that are political committees are required to register with the
3 Commission and publicly report all of their receipts and disbursements. 2 U.S.C. §§ 433, 434.
4 The Act defines a "political committee" as any committee, association, or other group of persons
5 that receives "contributions" or makes "expenditures" for the purpose of influencing a Federal
6 election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The
7 term "contribution" is defined to include "any gift, subscription, loan, advance, or deposit of
8 money or anything of value made by any person for the purpose of influencing any election for
9 Federal office." 2 U.S.C. § 431(8)(A)(i). The term "expenditure" is defined to include "any
10 purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value,
11 made by any person for the purpose of influencing any election for Federal office." 2 U.S.C.
12 § 431(9)(A)(i). An organization will not be considered a "political committee" unless its "major
13 purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."
14 Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) (Supplemental Explanation
15 and Justification). *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens*
16 *for Life, Inc. ("MCFL")*, 479 U.S. 238, 262 (1986).

17 It does not appear that RRVF met the statutory threshold for political committee status by
18 making \$1,000 in expenditures during the 2012 calendar year. According to the KCRR
19 Response, RRVF has not and will not spend over \$1,000 in connection with federal elections in
20 2012. KCRR Resp. ¶ 5. The Response is sworn, and the Commission has no contrary
21 information. The federal share of the total cost of the mailer was at most \$587.26, and the
22 Complaints do not allege, nor did the Commission identify any publicly available information
23 showing, that RRVF made additional expenditures or received any contributions. The

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1 Commission examined RRVF's disclosure reports filed with the Idaho Secretary of State but was
2 unable to determine whether disbursements or receipts reported therein are "contributions" or
3 "expenditures" as defined under the Act. *See, e.g.*,
4 [http://www.sos.idaho.gov/elect/Finance/2012/PrePrimary/Party/ReaganRepublicansVictoryFund.](http://www.sos.idaho.gov/elect/Finance/2012/PrePrimary/Party/ReaganRepublicansVictoryFund.pdf)
5 [pdf](http://www.sos.idaho.gov/elect/Finance/2012/PrePrimary/Party/ReaganRepublicansVictoryFund.pdf). Accordingly, there is no information that RRVF exceeded the \$1,000 statutory threshold for
6 political committee status. Because the \$1,000 statutory threshold is not met, there is no need to
7 reach whether the major purpose of KCRR is "Federal campaign activity (i.e., the nomination or
8 election of a Federal candidate)." Political Committee Status, 72 Fed. Reg. 5595, 5597 (Feb. 7,
9 2007) (Supplemental Explanation and Justification).

10 2. Independent Expenditure Reporting

11 Although there is no evidence that RRVF was required to register and report with the
12 Commission as a political committee, RRVF should have reported the cost of the federal share of
13 the mailer as an independent expenditure. The Act requires every person other than a political
14 committee who makes independent expenditures of over \$250 in a calendar year to file an
15 independent expenditure report.⁷ 2 U.S.C. § 434(c); 11 C.F.R. § 109.10(b). The Act defines an
16 independent expenditure as any expenditure that expressly advocates the election or defeat of a
17 clearly identified candidate and is not made in concert with a candidate, a political party
18 committee, or their respective agents. 2 U.S.C. § 431(17).

19 The mailer at issue is an independent expenditure that expressly advocates the election of
20 Congressman Labrador. *See* 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. The mailer urges the
21 reader to "vote by mail or at the polls" and states that it "is very important that we vote to

⁷ 24-hour independent expenditure reporting is required for expenditures aggregating \$1,000 or more after the twentieth day but more than 24 hours before an election. 2 U.S.C. § 434(g); 11 C.F.R. § 109.10(d). The federal candidate's share of RRVF's expenditure was less than \$1,000, so 24-hour reporting was not required.

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1 nominate the strongest conservative Republican candidates" accompanied with a list of
2 "conservative common-sense candidates" endorsed by KCRR, including Labrador. See
3 11 C.F.R. § 100.22(a); *MCFL*, 479 U.S. at 249. There is no allegation that the mailer was
4 coordinated with Raul Labrador or his committee and KCRR's Response asserts that none of
5 RRVF's expenditures were coordinated with federal candidates. KCRR Resp. ¶ 6.
6 Thus, it appears that RRVF violated 2 U.S.C. § 434(c) by failing to report the federal share of the
7 expenditure for the mailer as an independent expenditure. Due to the small amount in violation,
8 however, the Commission dismisses this violation as a matter of prosecutorial discretion. See
9 *Heckler v. Chaney*, 470 U.S. 821 (1985).

10 3. Disclaimer

11 Because RRVF's mailer expressly advocated the election of a federal candidate, it may
12 have required an appropriate disclaimer. The Act requires all public communications that
13 expressly advocate the election or defeat of a clearly identified candidate to contain disclaimers.
14 2 U.S.C. § 441d; 11 C.F.R. § 110.11(a)(2). The definition of public communication includes a
15 mass mailing, which is defined as 500 pieces of mail of an identical or substantially similar
16 nature within any 30-day period. 11 C.F.R. §§ 100.26, 100.27. Communications that are not
17 authorized by a candidate are required to clearly state the name and permanent street address,
18 telephone number, or World Wide Web address of the person who paid for the communications,
19 and to state that the communications were not authorized by any candidate or the candidate's
20 committee. 2 U.S.C. § 441d(a)(3).

21 The Commission, however, does not have information regarding precisely how many
22 mailers RRVF distributed, nor a time frame in which the mailers were distributed. Even if more
23 than 500 mailers were disseminated within a 30-day period, thereby triggering the disclaimer

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- 1 requirement, the mailer did include a partial disclaimer and identified only one federal candidate
- 2 out of 14 candidates listed Accordingly, and considering the small amount in violation, the
- 3 Commission exercises its prosecutorial discretion to dismiss this alleged violation. *See Heckler*
- 4 *v. Chaney*, 470 U.S. 821 (1985).

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